

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance
(916) 322-5662

• • Administration • •
322-5660

• • Executive/Legal • •
322-5901

• • Enforcement
322-6441

June 26, 1984

James L. Hagar
Shadle, Hunt, Hagar and Cotten
235 Jefferson Street
P.O. Box 640
Vista, CA 92083-0213

Re: Advice Letter No. A-84-144

Dear Mr. Hagar:

Thank you for your request for advice on the conflict of interests provisions of the Political Reform Act.

FACTS

You are on the Board of Trustees of the Vista Unified School District. You also own a 45% interest in a law practice. One of the firm's clients is Dr. Gary Olsen who is the Superintendent of the School District. Dr. Olsen provided the firm with \$369 in gross income during the last 12 months. In addition, Dr. Olsen's sons have provided the firm with \$450 in income during the last 12 months.

QUESTION PRESENTED

Does the Political Reform Act require you to disqualify yourself on decisions affecting Dr. Olsen?

CONCLUSION

The Political Reform Act does not require you to disqualify yourself on decisions affecting Dr. Olsen because he is not a source of income to you.

DISCUSSION

Government Code Section 87100^{1/} prohibits a public official from making, participating in the making, or using his official position to influence^{2/} a governmental decision in which he knows or has reason to know he has a financial interest. An official has a "financial interest" in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect^{3/} on:

* * *

(c) Any source of income . . . aggregating two hundred fifty dollars (\$250) or more in value provided to . . . the public official within 12 months prior to the time when the decision is made....

(Section 87103)

A client of your law firm is a source of income to you if he or she paid the firm sufficient fees, during the last 12 months, such that your pro rata share (45%) amounts to \$250 or more. (Section 82030(a).) In the case of Dr. Olsen, your pro rata share of the fees that he has paid the firm is only \$166. Therefore, he is not a source of income to you and you are not required to disqualify yourself as to decisions affecting him. The fact that the firm received fees from his sons does not alter this analysis.

^{1/} Hereinafter all statutory references are to the Government Code unless otherwise indicated.

^{2/} See the enclosed copy of 2 Cal. Adm. Code Section 18700 which defines these terms.

^{3/} See the enclosed copy of 2 Cal. Adm. Code Section 18702 which defines the term "material financial effect."

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If you have any questions please feel free to contact me at (916) 322-5901. If, at anytime in the future, Dr. Olsen becomes a source of income to you, I will be glad to provide you with additional advice.

Very truly yours,

Janis Shank McLean
Janis Shank McLean
Counsel
Legal Division

JSM:plh
Enclosures

ERNEST L. HUNT, JR.
JAMES L. HAGAR
CARY L. COTTEN

MAY 30 8 37 AM '84

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MIL0 E. SHADLE
OF COUNSEL

May 25, 1984

Fair Political Practices Commission
1100 "K" Street
P.O. Box 807
Sacramento, CA 95804

Dear Sir or Madam:

As you can see from the above letterhead, I am an attorney. I am also a member of the Board of Trustees of the Vista Unified School District.

Last year, the Superintendent of our district resigned and the Assistant Superintendent, Dr. Gary Olson, was first made acting, then permanent, Superintendent. My law firm had represented Dr. Olson for a number of years prior to these events, first by my partner, Milo Shadle, prior to his retirement five years ago, and thereafter by me. Accordingly, I abstained from the decisions to promote Dr. Olson and publically stated the reason for my abstentions.

The Board at this point is attempting to establish performance criteria and goals for Dr. Olson. Obviously, the Board will also find it necessary from time to time to evaluate Dr. Olson's performance. My first question is: does state law, rules, or regulations prohibit me from participating in establishing those performance criteria and goals and in evaluating his performance?

It seems to me that to some large extent the Superintendent's goals are inseparable from the goals established for the district as a whole. That is, it seems to me that any Superintendent's primary job or goal is to carry out or see that the district accomplishes the goals established by the Board and/or mandated by law. Do you have any suggestions on what say I can have in these matters? Are there guidelines on separating the Superintendent's performance from his responsibility to accomplish the District's goals. It is my intent, unless you clearly indicate to the contrary, to continue to help establish the District's goals. I see establishment and achievement of those goals as the primary job of the Board.

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Would it make any difference, at this point, if Dr. Olson henceforth used another firm for any legal business that he may have? In the last twelve months, I billed through my firm (in which I have a 45% profits interest), \$369.00 to Dr. and Mrs. Olson, so it is not as if he has a lot of legal business or as if my financial well-being depends on his business. If I stopped representing Dr. Olson, when, if ever, would I be able to vote on a subsequent contract for him or evaluate his performance and establish performance criterion for him? I last performed any legal services for Dr. or Mrs. Olson in December, 1983, but as I said above, his relationship with our firm goes back at least ten years, or as long as I have been an attorney.

Also, two of his sons used my services to start a corporation in which my fees were less than \$450.00 (not including filing fees and other third party costs). Initially Dr. Olson was going to be involved in that corporation as a shareholder but he decided not to at a very early stage (prior to the end of December, 1983, I believe). If I do work for that corporation or for his sons (assuming that there is such work) in the future would I be precluded from evaluating Dr. Olson or establishing performance criteria for him?

In advance, thank you for your cooperation in answering these questions and for any guidance you can give me in this area.

Very truly yours,


James L. Hagar

JLH/nf